

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 22, 2002

CHARLES KENNETH BRANCH v. VIRGINIA LOUISE THOMPSON

Appeal from the Juvenile Court for Robertson County
No. D13168 Max Fagan, Judge

No. M2001-01231-COA-R3-CV-Filed November 26, 2002

Virginia Louise Thompson appeals, pro se, the action of the Juvenile Court of Robertson County on May 2, 2001 that changed custody of her two pre-teenage girls from her to their Father, her former husband, Charles Kenneth Branch. We affirm the action of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

WILLIAM B. CAIN, J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., and PATRICIA J. COTTRELL, J., joined.

Virginia Louise Thompson, Nashville, Tennessee, Pro Se.

Lisa Sherrill Richter, Springfield, Tennessee, for the appellee, Charles Kenneth Branch.

OPINION

Mary Frances Branch and Elizabeth Louise Branch, the twin daughters of Virginia Louise Thompson and Charles Kenneth Branch, were born August 24, 1994. On August 1, 1995, the Juvenile Court of Robertson County entered a Consent Decree finding that the children were dependent and neglected and that they suffered from shaken baby syndrome. The juvenile court further found that Michelle Minnis (the twins' babysitter), Ben Thompson (Virginia Thompson's minor son from a previous marriage), and Virginia Thompson each had access to the twins when the injury occurred. No determination was made as to who caused the injury, and upon a finding that Virginia Thompson posed no threat to the children, custody of them was immediately returned to Virginia Thompson. The Consent Decree provided in part:

3. Virginia Thompson will closely monitor contact between her son, Ben Thompson, and her daughters, Mary F. Branch and Elizabeth L. Branch. Ben Thompson will continue in therapy for so long as his mother and therapist deem this appropriate. Ben Thompson will not be permitted unsupervised access to the children.

4. The Department of Human Services and Virginia Thompson jointly agree to supervise any child care arrangements made by Virginia Thompson. The Department of Human Services shall be responsible to inform Ms. Thompson of any adverse knowledge it gains concerning any child care provider for the children and will take reasonable precautions to assure the safety of the children at any licensed day care facility. The Department of Human Services will make visits with the regular child care provider at least quarterly in order to comply with this provision. Virginia Thompson will seek the advice of a DHS Social Worker any time she has any suspicion that the girls are being either neglected or abused. The DHS will monitor the family for a period of one year from the date of this Decree.

The juvenile court's Consent Decree contains a hand written addition by Judge Glover, who signed the decree, which reads:

7. The Mother, Virginia Thompson, is not to remove the aforesaid minor children from the State of Tennessee until a final hearing is held in pending divorce action.

In an essentially parallel proceeding in the Circuit Court of Robertson County, Tennessee, Ms. Thompson and Mr. Branch were divorced by Decree entered October 21, 1996. In this circuit court Decree, sole care, custody and control of the twin children, Mary and Elizabeth, was vested in Ms. Thompson. The history of this proceeding is recited in the judgment of this Court from an appeal of the Robertson County Circuit Court proceedings.

On March 3, 1998, Mother filed a petition for contempt alleging that Father failed to pay child support of \$570.00 per month and medical expenses as ordered by the final decree of divorce. In her petition, Mother also sought a judgment in the amount of \$2,500.00 for furniture which she alleged Father allowed to ruin.

Father filed an answer and counter petition denying that he was in contempt of court and averring that since the entry of the final decree of divorce, there had been a substantial and material change of circumstances which justified reducing child support. Father further averred that since the entry of the final decree of divorce, there had been substantial and material changes of circumstance such that a change of sole custody from Virginia Thompson to Charles Branch is in the best interests of the minor children. Father alleged specifically that Mother continued to allow Ben Thompson unrestricted access to the children in direct violation of the juvenile court's consent decree of August 1, 1995.

A trial on the merits was held on August 13, 1998. Mother testified that she lived in Nashville and was employed with the Robertson County Board of Education as a teacher. She stated that the children exhibited abnormal behavior after their visits with Father, who resides in Port St. Joe, Florida. Father testified that he

complained to DHS because Mother continued to allow Ben Thompson to remain unsupervised with the minor children, in violation of the consent decree issued by Robertson County Juvenile Court. Father testified that he requested a change in custody because Mother had shown a strong desire to prevent him and his family members from seeing the children. Father also testified that he felt that the children's health and safety were being jeopardized and that his family could provide a more nurturing environment. He stated that he was concerned that the children would be abused by the perpetrator that abused them before.

On October 16, 1998, the court entered an order incorporating the court's finding of facts, as stated from the bench, which found a material change of circumstance and changed sole custody of the children from Mother to Father. The court further ordered that Mother pay child support to Father in the amount of \$659.00 per month, except during her summer visitation period. The court did not find Father in contempt for non-payment of the medical expenses paid by Mother, because of her failure to establish the expense. The court ordered Mother to provide major medical insurance for the minor children and ordered that the parties split any expenses not covered. Father was awarded a judgment of one-half of his entire attorneys fee in the cause, in the amount of \$1,732.50. Father was ordered to pay Mother \$300.00 per month toward his back due child support obligation of \$3,210.00, with accrued simple interest at the rate of 12% per annum beginning September 1, 1998.

Branch v. Thompson, No. M1998-00511-COA-R3-CV, 2000 Tenn. App. Lexis 442, at *4-6 (Tenn. Ct. App. July 7, 2000).

Pursuant to the October 16, 1998 Order of the Circuit Court of Robertson County, custody of the twin girls was transferred to Charles Kenneth Branch, then living in Florida. Virginia Louise Thompson appealed the judgment of the Robertson County Circuit Court asserting that the circuit court lacked subject matter jurisdiction to make a custodial determination. Finding that Tennessee Code Annotated section 37-1-103 vested exclusive original jurisdiction relative to the custody of the twin girls in the Juvenile Court of Robertson County, this Court held the Robertson Circuit Court Decree of October 16, 1998, transferring custody of the twins to the Father, to be void and, thereby, reversed the Order of the circuit court holding:

Accordingly, the order as it deals with custody and the obligations imposed upon Mother as the non-custodial parent is vacated. The previous order of the circuit court establishing the obligations of Father as the noncustodial parent shall remain in effect. The case is remanded to the circuit court for such further proceedings as are necessary. The question of custody remains in the Juvenile Court of Robertson County.

Thompson, 2000 Tenn. App. LEXIS 442, at * 12.

Following the judgment of this Court of July 7, 2000 holding that the Robertson County Circuit Court had no subject matter jurisdiction as to custody of the twin girls, on July 14, 2000, Charles Branch filed a Petition for Custody of the children in the Robertson County Juvenile Court. The matter was tried before the Robertson County Juvenile Court on January 21, 2001, February 8, 2001, and March 2, 2001 resulting in an Order of the Juvenile Court of Robertson County of May 2, 2001 changing custody of the twin girls from Thompson to Branch.

So it is that these twin girls were in the custody of their Mother from the time of the August 1, 1995 Consent Order in the Robertson County Juvenile Court until the October 16, 1998 judgment of the Robertson County Circuit Court, after which they were in the custody of the Father in Florida until the July 7, 2000 Opinion of this Court declaring the October 16, 1998 judgment of the Circuit Court of Robertson County to be void for lack of subject matter jurisdiction. Custody then reverted back to the Mother pursuant to the August 1, 1995 Consent Order in the Juvenile Court of Robertson County. They were then returned to the Father pursuant to the Robertson County Juvenile Court Order of May 2, 2001. It is from this Robertson County Juvenile Court Order of May 2, 2001 that the Mother now timely appeals.

Appellant, in her pro se appeal, asserts eight issues for appellate review, to-wit:

- I. Whether the trial court lacked subject matter jurisdiction to determine issues of support and visitation.
- II. Whether the trial court violated Mother's procedural due process rights on August 3, 2000.
- III. Whether the trial court and the State of Tennessee violated Mother's liberty rights on August 3, 2000.
- IV. Whether the trial court erred in ignoring the appellate court decision of July 7, 2000.
- V. Whether the trial court erred in denying Mother's Motion for a Change of Venue.
- VI. Whether the trial court erred and abused its discretion in its apparent punitive change of custody from Mother to Father.
- VII. Whether the trial court abused its discretion in applying the support guidelines.
- VIII. Whether the trial court erred and abused its discretion in re-opening the 1995 Petition for Dependency/Neglect.

The issues on appeal asserted by Mother have little relevance to the controlling issue before the Court. That issue is the subject matter jurisdiction of the Juvenile Court of Robertson County to address the issues set forth in the Petition for Custody of the minor children filed by the Father on July 14, 2000 in the Robertson County Juvenile Court and the Answer of the Mother thereto filed August 2, 2000.

This Court, in the appeal by the Mother from the judgment of the circuit court of October 16, 1998, declared that Order to be void as to matters of custody because the Robertson County Juvenile Court had exclusive jurisdiction as to custody under Tennessee Code Annotated section 37-1-103. Any further effort by either of the parties to address matters of custody of the twin girls in the circuit court would have been futile. The July 7, 2000 judgment of this Court, appeal thereof never having been sought in the Supreme Court of Tennessee, is the law of the case.

Under the law of the case doctrine, an appellate court's decision on an issue of law becomes binding precedent to be followed in later trials and appeals of the same case involving the same issues and facts. *Jones v. Jones*, 784 S.W.2d 349, 351 n. 1 (Tenn. Ct. App. 1989); *Cook v. McCullough*, 735 S.W.2d 464, 470-71 (Tenn. Ct. App. 1987) (quoting *Holcomb v. McClure*, 217 Miss. 617, 64 So.2d 689, 691 (1953)); 1B James W. Moore & Jo Desha Lucas, *Moore's Federal Practice* ¶ 0.404[1] (2d ed. 1995). The doctrine applies to issues that were actually before the court, *Barnes v. Walker*, 191 Tenn. 364, 374, 234 S.W.2d 648, 652 (1950), or to issues that were necessarily decided by implication. 18 Wright et al., *supra*, § 4478, at 789. . . .

The application of the law of the case doctrine to intermediate appellate court opinions does not necessarily depend upon whether the opinion has been reviewed by the Tennessee Supreme Court. The doctrine has been applied to decisions that have not been reviewed by the Supreme Court, *Bivins v. Hospital Corp. of Am.*, 910 S.W.2d 441, 447 (Tenn. Ct. App. 1995), as well as to decisions that the Supreme Court has declined to review. *Life & Casualty Ins. Co. v. Jett*, 175 Tenn. 295, 299, 133 S.W.2d 997, 998-99 (1939); *State ex rel. Kirkpatrick v. Tipton*, 670 S.W.2d 224, 226 & n. 5 (Tenn. Ct. App. 1984); *S.M.R. Enters. v. Southern Haircutters, Inc.*, 662 S.W.2d 944, 950 (Tenn. Ct. App. 1983).

Ladd v. Honda Motor Co., Ltd., 939 S.W.2d 83, 90-91 (Tenn. Ct. App. 1996).

This Court, in its July 7, 2000 opinion, ruled only on subject matter jurisdiction holding that all other issues on appeal were rendered moot by the holding that the circuit court had no subject matter jurisdiction to make a custodial determination. Yet, the final paragraph of the July 7, 2000 opinion is somewhat confusing in stating that "the previous order of the circuit court establishing the obligations of the Father as the non-custodial parent shall remain in effect." This, apparently, has reference to the provisions of the divorce decree entered in the Robertson County Circuit Court on October 21, 1996. The case was thereupon remanded to the only court from which the appeal was

perfected, namely the Circuit Court of Robertson County. The opinion then plainly says “the question of custody remains in the Juvenile Court of Robertson County.”

The concept of “custody” connotes a complex bundle of rights and obligations arising from the parent-child relationship. 2 Homer H. Clark, *The Law of Domestic Relations in the United States* § 20.2, at 481 (2d ed. 1987) (“Clark”). These rights and obligations are extensive and operate against the state and third-persons. See Katherine T. Bartlett, *Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed*, 70 Va.L.Rev. 879, 884 (1984) (“Bartlett”). They include the obligation to raise and support the child and the right to make fundamental decisions about the child’s welfare, including the child’s education, religious training, discipline, and medical care. See *Trompeter v. Trompeter*, 218 Kan. 535, 545 P.2d 297, 301 (1976); *Taylor v. Taylor*, 306 Md. 290, 508 A.2d 964, 967 (1986); Tenn. Code Ann. §§ 37-1-102(b)(7), -140 (1991).

Parents share these custodial rights and obligations in the context of an ongoing marriage. See 2 *Child Custody & Visitation Law and Practice* § 10.03[1] (MB 1993). Divorce, however, requires the courts to allocate these rights and obligations between the parents. The precise scope and nature of post-divorce custody arrangements vary considerably from case to case depending on the terms of the custody decree.

The most common post-divorce arrangement is one in which the trial court awards sole legal custody to the parent with whom the child or children will reside. See 2 *Child Custody & Visitation Law and Practice* § 10.03[3][c][ii] (MB 1993); W. Walton Garrett, *Tennessee Divorce, Alimony, and Child Custody* § 25-2 (3d ed. 1990). Under this arrangement, the parent receiving custody does not necessarily have the same full, exclusive rights with respect to the child that a parent in an intact family would have. The noncustodial parent usually retains several residual rights and obligations such as the obligation to support, the right of visitation, and the right and obligation to direct the child’s activities while on visitation. See Clark § 20.2, at 481; Bartlett, 70 Va.L.Rev. at 900. However, in the absence of specific provisions in the custody decree, the parent receiving custody retains the sole prerogative to make the significant decisions concerning the child’s education, residence, religious training, and medical care. See Clark § 20.2, at 482 n. 11; Joan G. Wexler, *Rethinking the Modification of Child Custody Decrees*, 94 Yale L.J. 757, 808 (1985).

Rust v. Rust, 864 S.W.2d 52, 54-55 (Tenn. Ct. App. 1993).

To construe the July 7, 2000 opinion of this Court to divide custody, as so defined, into component parts and to require parallel proceedings in both the juvenile court and the circuit court is not a reasonable construction of the Order of Remand. In determining that a change of custody

circumstance had occurred as to the issues raised by the Petition of Charles Branch filed July 14, 2000 and the Answer of Virginia Thompson thereto, the Juvenile Court of Robertson County acted within its subject matter jurisdiction, and, having made such a finding, that court necessarily had to adjust the component parts of custody including visitation and support.

In its order of May 2, 2001, the trial court made extensive findings of fact upon which it based the decision that a change of circumstances had occurred and that the best interest of the children would be served by changing custody from Thompson to Branch.

This court has considered the proof in this matter and considers the criterion set forth in T.C.A. §36-6-106 in making a determination of custody.

Upon consideration of the testimony presented in this cause, upon the review of the record and exhibits presented to the court and upon consideration of the issues presented, the court makes the following findings and conclusions:

The parties have consistently and relentlessly exhibited a remarkable and consuming disdain for each other. This hatred has not only manifested itself in the interaction between the parties, but has also inured to the detriment of the children in this cause.

The court finds that the parties are similarly situated regarding the ability of each parent to provide love and affection to the children, to provide food, clothing, medical care, education and other necessary care as primary caregiver. The parties likewise are similarly situated in consideration of their respective homes, schools and communities. There is no evidence of any appreciable difference in either parent's physical or mental health. The court finds that neither parent presents a stronger argument than the other with respect to the continuity of residence, as the children in this cause have suffered a considerable lack of continuity as a result of the continual litigation between the parties. The preferences of the children are not considered in this matter because of their young age. The home, school and community records of the children are not compelling because of the children's ages. While there has developed a concern regarding learning disabilities, the court does not find one parent more or less interested in this issue.

The court finds significant differences in the parties with respect to certain other issues. Of particular concern to the court is the disobedience to certain court orders and instructions exhibited by Virginia Thompson. The court considers Ms. Thompson to be an educated, articulate and intelligent individual. However, she has repeatedly "misunderstood" court instructions and orders and accordingly has failed to comply with numerous court mandates. She has left her son Ben alone with the twin girls in this case on numerous occasions since they were infants, in contradiction to the court's mandate otherwise. She has left the jurisdiction of the court in contradiction to court orders. She has failed to comply with the court's order regarding tax deductions for the children and when questioned refused to commit to compliance on this issue in the future. She has failed to make medical payments as ordered by the court. She did not keep the Department of Children's Services

informed regarding her address as instructed. She previously failed to comply with her responsibilities as guardian for her son Ben's assets in trust, and appears to have made unauthorized withdrawals without the requisite court approval, and thereafter failed to make accountings to the court for the actions she had taken. Most notably, after receiving instructions from this court regarding civil conduct and interaction during the pendency of this case, Ms. Thompson failed to give the father any notice of concerns about possible learning disabilities for the children, or about scheduled "S-Team" meetings to address these concerns or plans to consult a traumatic brain injury specialist regarding these concerns. While many of these incidents occurred in the past, the court finds them relevant as they aggregate to exhibit a pattern of disregard for the orders and instructions of the court, which calls into question her willingness to follow future court instructions.

The court finds that the parties differ in their respective stability of family units. Mr. Charles Branch appears to have a close family, with his parents and siblings living in the same general location. His family enjoys a close relationship and are involved extensively in interaction with the twin girls, especially the paternal grandparents. Furthermore, he appears to enjoy a good relationship with his mother-in-law, Ms. Martha Jo Johnson as do other members of his family. Conversely, Ms. Virginia Thompson has a strained relationship with her mother and has at times refused to permit her mother to have access to the twins. Her relationship with other members of Mr. Branch's family can best be described as adversarial.

The court finds by a clear preponderance that the children suffered from child abuse in the form of shaken baby syndrome while in the custody of the mother. While there is no finding as to which of three individuals actually committed the abuse, testimony in this cause indicates that the baby-sitter, Ms. Michelle Minnis, the half brother, Ben Thompson, and the mother, Virginia Thompson were the only individuals who had access to the children. Furthermore, the testimony in this cause indicates that the baby-sitter was no longer involved or provided any access to the children after the initial court proceedings, leaving Ms. Thompson and her son with sole access. Furthermore, Ms. Thompson made indications to the Department of Children's Services that she suspected her son of the abuse, but thereafter failed to comply with court orders to prevent unsupervised access to the children by her son, Ben.

Of perhaps the most significance to this court is the consideration of each parent's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent. The court finds the foul and abusive language used by Mr. Branch in conversation with Ms. Thompson to be deplorable, repulsive and indefensible. However, Ms. Martha Jo Johnson testified that she observed Mr. Charles Branch to be "even handed" with the twins, showing no favoritism. She stated that Mr. Branch has allowed her to have access and interaction with the girls, and is considerate of her views. Conversely, Ms. Johnson testified that Virginia Thompson tries to shut Mr.

Branch out of his daughter's lives. She testified that Ms. Thompson took the girls to the hospital on two occasions without notice to the father, that she doesn't want him involved, and that she has attempted to reduce his visitation.

Virginia Thompson has locked her older son out of his home on several occasions. She has kept him out of school to provide daycare for the twins. She has abused her fiduciary position as guardian of her son's trust assets. She has inadequately supervised his interactions with the twins. These issues call into question the propriety of her parenting decisions.

While Mr. Branch has exhibited substantial animosity toward Ms. Thompson, there is no indication that he has endeavored to deprive Ms. Thompson of access to the girls, their school or medical records or other items of interest. Conversely, Ms. Thompson has consistently and now continues to be uncooperative and to keep information about the children from their father. As previously noted, she failed to notify Mr. Branch of an "S-Team" meeting which occurred the day before the last court appearance. She has failed to inform Mr. Branch regarding medical issues including hospitalizations and procedures, she has refused to permit the grandparents to facilitate visitation by providing transportation, she has failed to provide her phone number to Mr. Branch so that he could call the children and indeed maintained an unlisted number for some time, she has supposedly "lost" birth certificates and social security cards when queried by Mr. Branch, she has withheld school information including grades, teacher information, and school meetings, and she has failed to communicate with Mr. Branch regarding the children's medical bills and other concerns.

These numerous and continuing indices make it apparent that Ms. Thompson refuses to foster any relationship between the twin girls and their father, and that she thereby will continue to deprive them of the benefit of an open and affectionate relationship with their father if she continues to have custody of these girls.

There is little to be gained by an extensive recitation of the testimony in this lengthy record. It suffices to say that this is essentially a swearing contest between Charles Branch and Virginia Thompson with Branch supported in large part by the testimony of both the maternal and paternal grandmothers of the twin daughters.

In this fact-driven case, the Juvenile Judge of Robertson County had the benefit of being able to observe the manner and demeanor of these two parents and all of the other witnesses who testified in this case, while this intermediate Appellate Court is limited to a review of the printed transcription of such testimony. Consequently, the rule is firmly established that trial courts must be able to exercise broad discretion in judgments relating to the credibility of witnesses, and appellate courts are reluctant to second guess trial court decisions based upon the credibility of witnesses. *Gaskill v. Gaskill*, 936 S.W.2d 626 (Tenn. Ct. App. 1996); *Town of Alamo v. Forcum-James Co.*, 327 S.W.2d 47, 49 (Tenn. 1959).

The most egregious transgressions of Ms. Thompson involve her determined efforts to isolate the children from their father and deprive them of the benefit of an open and affectionate relationship with him. Witness her testimony relative to the matter of telephone communication:

Q. (By Ms. Richter) When the divorce was final from Mr. Branch, did you ever give him a telephone number where he could contact the girls?

A. He had a phone number because I was living at my mother's at the time.

Q. Okay. Did you have a cell phone at that time?

A. I don't recall if I had it at that time or not.

Q. Did you eventually obtain a cell phone?

A. I did.

Q. Did you give Mr. Branch the cell phone number?

A. No.

Q. When you moved to Boscobel Street did you give him that telephone number?

A. No.

Further, relative to summer visitation, to which Mr. Branch was entitled, Ms. Thompson testifies:

Q. Now, on July 1st of 1998 when Mr. Branch came to pick up the children for the summer visitation, you purposely hid from him with the children; did you not?

A. I wouldn't say purposely hid from him. I came up to Springfield.

Q. You, in fact, told Mr. Branch that you were running errands, and you wanted to take the children swimming; is that not right?

A. No. I stated to him that - - well, I didn't tell him I came up to Springfield. I did say the word errand. But I told him that the children had asked to go swimming, but I didn't say I would take them swimming.

Q. You weren't really running errands on that day, were you, though?

A. I came up to Springfield. That was the errand.

Q. Do you remember in your deposition that you gave on page 55, line 9: "Did you tell him you were running errands?"

"Answer: I don't recall if I did or not. I may have stated that to avoid telling him that I was consulting my attorney."

Do you remember giving me that answer?

A. No.

Q. Do you remember when I asked the follow-up question: "Why wouldn't you tell him the truth?"

"Answer: I don't think it was his business."

Do you remember that?

A. No. But I may have said that. Oh, well, I'm sure I did, you have it in the deposition.

This Court has held:

There are, however, additional allegations of changed circumstances. Change of custody is not appropriate as a method to punish a parent for failing to comply with court orders regarding visitation. *Adams v. Cooper*, No. M1999-02664-COA-R3-CV, 2000 WL 225573, at *7 (Tenn. Ct. App. Feb. 29, 2000) (no Tenn. R. App. P. 11 application filed). However, a custodial parent's actions which interfere with the relationship between the child and non-custodial parent may constitute a material change of circumstances. At the time of the initial grant of custody, the court and the parties anticipate that the custody and visitation arrangements will be complied with. The initial custody arrangement is intended to enhance the child's relationship with each parent. *Adelsperger*, 970 S.W.2d at 484. Both the courts and the legislature have recognized the importance to the child's well-being of maintaining a relationship with the noncustodial parent. *Wilson v. Wilson*, 987 S.W.2d 555, 564 (Tenn. Ct. App. 1998); Tenn. Code Ann. § 36-6-106(10) (Supp. 2000). A custodial parent's obstruction of the noncustodial parent's visitation rights or conduct to preclude continuation of the parent-child relationship is a sufficient change of circumstances to warrant further consideration of a change of custody. *Wilson v. Tittle*, No. M2000-00115-COA-R3-CV, 2000 WL 1207247, at *2, 4, 6 (Tenn. Ct. App. Aug. 25, 2000) (*perm. App. denied* Mar. 12, 2001).

Mother herein characterizes the post-1997 incidents as "a couple of glitches in visitation." Because we do not agree with that characterization, we need not address the issue of whether such "glitches" can constitute a material change of circumstances. Whether a custodial parent's conduct has obstructed communication between the child and the noncustodial parent so as to constitute interference with or attempt to damage the parent-child relationship is, ultimately, a question of fact to be determined in the context of a particular case.

Roache v. Bourisaw, No. M2000-02651-COA-R3-CV, 2001 Tenn. App. Lexis 756, at *18-20 (Tenn. Ct. App. Oct. 10, 2001).

In the Consent Decree of August 1, 1995, custody was vested in Ms. Thompson. In such decision, the court was entitled to assume that both parties would act in the future to facilitate the custody and visitation arrangement in such manner as would foster a meaningful relationship between their twin daughters and both the custodial and noncustodial parent. In the period that intervened between the Consent Decree of August 1, 1995 and the judgment of the Juvenile Court of Robertson County of May 2, 2001, the exact opposite occurred. As the trial court held on May 2, 2001: "The parties have consistently and relentlessly exhibited a remarkable and consuming disdain for each other. This hatred has not only manifested itself in the interaction between the parties, but has also enured to the detriment of the children in this cause."

In the development of this hostile relationship and its resulting detriment to the twin daughters, the trial court found Ms. Thompson to be, by far, the greater transgressor. The evidence

does not preponderate against this finding of the trial court, and the obstructive conduct of Ms. Thompson constitutes sufficient change of circumstance to warrant a change of custody. *See Wilson v. Tittle*, No. M2000-00115-COA-R3-CV, 2000 WL 1207247 (Tenn. Ct. App. Aug. 25, 2000); *Bourisaw*, 2001 Tenn. App. Lexis 756.

In its best interest analysis under Tennessee Code Annotated section 36-6-106, the trial court found both of the parties to be equal as to love and affection for the children and as to the ability to provide for the needs of the children. However, the trial court affirmatively found that Ms. Thompson manifested no intention of changing her pattern of conduct and would continue to do everything that she could to destroy the relationship between the twin daughters and their father. In the words of the trial court: “These numerous and continuing indices make it apparent that Ms. Thompson refuses to foster any relationship between the twin girls and their father, and that she thereby will continue to deprive them of the benefit of an open and affectionate relationship with their father if she continues to have custody of these girls.” The evidence certainly does not preponderate against these findings of the trial court, which findings support the further finding that the best interests of the children are accomplished by vesting custody to Mr. Branch.

Mother asserts that the trial court erred in refusing to change venue in this case from Robertson County to Davidson County. The decision of whether or not to change venue rests in the sound discretion of the trial judge, and the decision of the trial court will not be reversed on appeal absent an abuse of discretion. *Tennessee Gas Transmission Co. v. Oakley*, 249 S.W.2d 880 (Tenn. 1952). The trial court in this case has not abused its discretion.

Mother further asserts that the trial court did not follow the Tennessee Child Support Guidelines in establishing the amount of her child support to be \$736 every two weeks. The record discloses that the trial court required each of the parties to provide their latest income tax returns and other proof of income. Neither the tax returns nor the proof of income are preserved for appellate review. As such, the evidence in the record does not preponderate against the findings of the trial judge.

In the final analysis, the guardian ad litem of these two twin girls hit the nail on the head:

My opinion about what is in the best interest of these girls is that this thing needs to stop now. Whatever it takes, it needs to stop now. These little girls do not need to grow up, in my opinion as guardian ad litem, in an environment in which their two parents, the only two they’re ever going to have - - they didn’t choose these parents - - these are the two they got, and my position or my opinion is that they need stability, but they need consistent coordinated stability of people working together, not pulling different ways for different purposes.

The judgment of the Juvenile Court of Robertson County is in all respects affirmed, and the case is remanded to the trial court for such further proceedings as are necessary, consistent with the opinion of this Court.

Costs of this appeal are assessed against Virginia Louise Thompson, for which execution may issue if necessary.

WILLIAM B. CAIN, JUDGE